



## MEMORANDUM

To: Members of the Michigan Senate Committee on Economic Development and Regulatory Reform

From: Doug Roberts, Jr., Director of Environmental and Energy Policy

Subject: Senate Bill 434 (Rules, Op-Memos/Guidance Documents)

Date: May 13, 2009

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The purpose of this memo is to inform you that the Michigan Chamber of Commerce **supports Senate Bill 434** (Senator Gilbert), a bill to revise the Administrative Procedures Act to limit state agency powers related to rules, operational memorandum and guidance documents, and to consider their impact on business. This legislation adds important new safeguards in the development of rules and regulations.

### Michigan Chamber Legislative Priorities

Michigan Chamber members, in adopting their 2009-10 legislative priorities, are calling on the Legislature to take aggressive action to help reduce the overall regulatory burden on our state. State agencies have been unilaterally imposing standards beyond federal regulations and beyond state laws, which are having a negative effect on economic growth. Senate Bill 434 would help address this problem.

### Rules

Senate Bill 434 is carefully crafted to address the issue related to state standards that are more stringent than federal standards. Section 32 (5) allows state agencies to adopt rules as promulgated by the federal government, but prohibits rules that are more stringent than federal rules unless authorized by statute. This language provides an important check and balance by the Legislature over rules being promulgated by state agencies. Currently, the Department of Environmental Quality is working on a rule related to the regulation of mercury. The cost of a Michigan-only rule will be over \$1 billion to utilities, which in turn will be passed on to Michigan rate-payers. The new language in SB 434 would help to ensure that the Michigan Legislature has oversight over rules that will have dramatic impacts on the citizens of our state.

### Op-Memos/Guidance Documents

Senate Bill 434 helps clarify the role of guidance documents and operational memoranda put out by state agencies. These types of documents were intended to provide guidance to department staff, but not to be binding on outside parties. In December 2008, Senator Garcia asked for an Attorney General opinion on the legality of operational memorandum and guidance documents issued by the DEQ related to underground storage tanks. The Attorney General (Opinion No. 7223) opined that guidance documents "do not have the force and effect of law and are not legally binding on the public or the regulated community." Senate Bill 434 would essentially codify the Cox opinion and provide more certainty for citizens and job providers.

### Conclusion

The Michigan Chamber would like to thank Senator Gilbert for his efforts in developing SB 434. We urge you to **support SB 434**. If you have any questions, please feel free to contact me at 371-2100.

